UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Beth Gokor Plaintiff, v. Randall S. Schlievert, M.D., in his individual capacity, et al., Defendants.	)	Case No.: 3:16-cv-3038-JGC Judge James G Carr **ANSWER AND JURY DEMAND OF DEFENDANT RANDALL S. SCHLIEVERT, M.D.** **JURY TRIAL DEMANDED** James E. Brazeau (0016887) Chad M. Thompson (0084044) Robison, Curphey & O'Connell, LLC Ninth Floor, Four Seagate Toledo, OH 43604 (419) 249-7900 (419) 249-7911 – facsimile jbrazeau@rcolaw.com cthompson@rcolaw.com Attorneys for Defendant Randall S. Schlievert, M.D., in his individual capacity

For his answer to Plaintiff's complaint, Defendant Randall S. Schlievert, M.D., in his individual capacity ("this Defendant"), states as follows:

1. This Defendant incorporates by reference into each and every paragraph of this Defendant's answer, his Report of January 8, 2015, as is incorporated, *inter alia*, in Plaintiff's complaint at paragraph 81. This Defendant incorporates by reference into each and every paragraph of this Defendant's answer the contract for Dr. Schlievert's services, as is incorporated, *inter alia*, in Plaintiffs' complaint at paragraph 7. Further incorporated into each

and every paragraph of this Defendant's answer is the pleading that this Defendant is without knowledge or information sufficient to form a belief as to the truth of any allegation purporting to ascribe job duties/descriptions/titles to this Defendant beyond those enumerated in the contract for Dr. Schlievert's services. Further incorporated into each and every paragraph of this Defendant's answer is the pleading that the medical records speak for themselves. Any pleading in this Defendant's answer is made by way of further answer to the pleading of this paragraph.

Nature of the Action

2. Paragraphs 1 and 2 of Plaintiff's complaint contain legal conclusions to which no responsive pleading is required. This Defendant denies the factual allegations in paragraphs 1 and 2 of Plaintiff's complaint to the extent they are asserted against this Defendant. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraphs 1 and 2 of Plaintiff's complaint.

3. This Defendant denies Plaintiff is entitled to any relief requested in paragraph 3 of her complaint, and is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's complaint.

Jurisdiction

4. Paragraph 4 contains legal conclusions to which no responsive pleading is required. This Defendant denies any remaining factual allegations contained in paragraph 4 of the complaint.

Venue

5. Paragraph 5 contains legal conclusions to which no responsive pleading is required. This Defendant denies any remaining factual allegations contained in paragraph 5.

Parties

6. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. Paragraph 7 contains legal conclusion to which no responsive pleading is required, including, but not necessarily limited to, paragraph 7's third and fourth sentences. This Defendant admits that he was a medical doctor board certified in general pediatrics and child abuse pediatrics at the time of his review of the case that forms the basis of Plaintiff's complaint. This Defendant admits he was responsible for providing Defendant LCCS with assessments of possible abuse and neglect within the scope of the contract for Dr. Schlievert's services. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 7 of Plaintiff's complaint.

8. Paragraph 8 states legal conclusions to which no responsive pleading is required. This Defendant denies any remaining factual allegations in paragraph 8.

Statement of Facts

9. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9-16 of Plaintiff's complaint.

10. Answering paragraph 17, this Defendant admits JJ was three years old at the time of the injury at issue in Plaintiff's complaint. This Defendant denies any remaining factual allegations in paragraph 17.

11. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 18-39 of Plaintiff's complaint.

12. Answering paragraph 40, the incident report speaks for itself. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 40.

13. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 41-54 of Plaintiff's complaint.

14. Answering paragraphs 55-56, this Defendant admits LCCS referred JJ's case to Defendant Schlievert for review pursuant to the terms of the contract for Dr. Schlievert's services, and admits he was at the time of his review of the case that forms the basis of Plaintiff's complaint a medical doctor board certified in general pediatrics and child abuse pediatrics. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraphs 55-56.

15. Paragraphs 57-65 contain legal conclusions to which no responsive pleading is required. Further answering paragraphs 57-65, the contract for Dr. Schlievert's services speaks for itself, and this Defendant denies any allegation ascribing duties outside the scope of that contract. Further answering, this Defendant admits he testified as an expert in legal proceedings initiated by the Lucas County Prosecutor's Office, and admits he was responsible. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraphs 57-65 of Plaintiff's complaint.

16. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of Plaintiff's complaint.

17. Paragraph 67 contains legal conclusions to which no responsive pleading is required. This Defendant denies any remaining factual allegations in paragraph 67 of Plaintiff's complaint.

18. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 68-80 of Plaintiff's complaint.

19. Answering paragraphs 81-82, this Defendant's January 8, 2015 Report speaks for itself. This Defendant denies any remaining allegations contained in paragraphs 81-82, either specifically or for lack of knowledge.

20. Paragraph 83 contains legal conclusions to which no responsive pleading is required. Further answering paragraph 83, this Defendant's January 8, 2015 Report speaks for itself, and this Defendant denies any remaining allegations contained in paragraph 83, either specifically or for lack of knowledge.

21. Answering paragraphs 84-85, this Defendant's January 8, 2015 Report speaks for itself. This Defendant denies any remaining allegations contained in paragraphs 84-85, either specifically or for lack of knowledge.

22. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 86-96 of Plaintiff's complaint.

23. Paragraph 97 contains legal conclusions to which no responsive pleading is required. Further answering paragraph 97, this Defendant's January 8, 2015 report speaks for itself, and this Defendant denies any remaining allegations in paragraph 97 of Plaintiff's complaint, either specifically or for lack of knowledge.

24. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 98-103 of Plaintiff's complaint. Further answering paragraph 100, this Defendant's January 8, 2015 Report speaks for itself.

25. Answering paragraphs 104-107, the Ohio Revised Code speaks for itself, and this Defendant denies any other factual allegations contained in paragraphs 104-107 of Plaintiff's complaint.

26. This Defendant denies the allegations contained in paragraphs 108-110 of Plaintiff's complaint, either specifically or for lack of knowledge.

27. Answering paragraphs 111-112, this Defendant denies he made any false, fabricated, or misleading reports and/or representations. This Defendant denies any remaining allegations contained in paragraphs 111-112 of Plaintiff's complaint either specifically, or for lack of knowledge.

28. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 113-120 of Plaintiff's complaint. Further answering paragraphs 119-120, this Defendant denies he caused any injury or damage to Plaintiff.

29. Answering paragraphs 121-123, this Defendant's January 8, 2015 Report speaks for itself. This Defendant denies the remaining allegations in paragraphs 121-123 of Plaintiff's complaint, either specifically or for lack of knowledge.

30. Answering paragraphs 124-125, this Defendant admits Attorney Gold caused a subpoena to be served on this Defendant in or around November 2015, which subpoena requested certain information related to this Defendant's January 8, 2015 Report. This Defendant further admits he responded to the subpoena via letter in or around November 2015. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraphs 124-125 or Plaintiff's complaint.

31. Answering paragraphs 126-128, this Defendant denies his January 8, 2015 was inaccurate or false, and denies the allegation that there was no basis for same. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraphs 126-128 of Plaintiff's complaint.

DEFENDANT' SCHLIEVERT'S FABRICATED REPORT:[1]

32. Answering paragraphs 129-135 and 137-140, this Defendant's January 8, 2015 Report and the contract for Dr. Schlievert's services speak for themselves. This Defendant

[1] This Defendant denies his January 8, 2015 Report was fabricated.

denies the remaining allegations in paragraphs 129-135 and 137-140 of Plaintiff's complaint, either specifically, or for lack of knowledge.

33. Answering paragraph 136, this Defendant knew that femoral fractures have been described in children who fell while running. This Defendant denies any remaining allegations contained in paragraph 136 of Plaintiff's complaint, either specifically, or for lack of knowledge.

34. This Defendant denies the allegations contained in paragraph 141 of Plaintiff's complaint.

35. Answering paragraph 142, this Defendant denies any allegation he did not consider that information which was necessary and available for this Defendant to properly draft his January 8, 2015 Report. This Defendant denies the remaining allegations contained in paragraph 142, either specifically or for lack of knowledge.

36. This Defendant denies the allegations contained in paragraph 143 of Plaintiff's complaint.

37. Answering paragraph 144, this Defendant admits he knows that some or all three year old children may be capable of verbal communication. This Defendant denies the remaining allegations in paragraph 144 of Plaintiff's complaint.

38. Answering paragraphs 145-147, this Defendant admits he did not interview JJ or his mother, and admits he did not observe any police interview prior to authoring the January 8, 2015 report. This Defendant denies any remaining allegations in paragraphs 145-147, either specifically or for lack of knowledge.

39. This Defendant denies the allegations contained in paragraphs 148-149 of Plaintiff's complaint.

40. Answering paragraph 150, this Defendant denies he intentionally omitted any information from the January 8, 2015 Report that was necessary thereto. This Defendant denies

any remaining allegations contained in paragraph 150 of Plaintiff's complaint, either specifically or for lack of knowledge.

LUCAS COUNTY:

41. Paragraphs 151-157 contain legal conclusions to which no responsive pleading is required. Further answering paragraphs 151-157, this Defendant admits he was responsible for providing Lucas County Children's Services ("LCCS") with assessments of possible abuse and neglect within the scope of the relevant agreement with LCCS to do so, and further admits he testified as an expert in legal proceedings that involved such assessments. Further answering paragraphs 151-157, this Defendant denies he intentionally omitted any information from the January 8, 2015 Report that was necessary thereto. This Defendant admits he did not receive training from Lucas County concerning the Fourth and Fourteenth Amendments. This Defendant denies each and every remaining factual allegation contained in paragraphs 151-157 of Plaintiff's complaint, either specifically or for lack of knowledge.

CLAIMS FOR RELIEF:

COUNT I

42. Answering paragraph 158, this Defendant incorporates each and every paragraph of this answer as if they were fully re-written here.

43. Paragraphs 159-163 contain legal conclusions to which no responsive pleading is required. This Defendant denies any remaining allegations contained in paragraphs 159-163 of Plaintiff's complaint, either specifically or for lack of knowledge.

44. This Defendant denies the allegations contained in paragraphs 164-166 and paragraphs 170-173. This Defendant denies any factual allegations in paragraph 174 of Plaintiff's complaint that are asserted against this Defendant.

45. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 167 of Plaintiff's complaint.

46. Answering paragraph 168, this Defendant admits his review of records and authoring of the January 8, 2015 Report occurred outside of a courtroom. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 168 of Plaintiff's complaint.

47. Answering paragraph 169, this Defendant incorporates the contract for Dr. Schlievert's services. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 169 of Plaintiff's complaint.

COUNT II:

48. Answering paragraph 175, this Defendant incorporates each and every paragraph of this answer as if they were fully re-written here.

49. Paragraphs 176-179 contain legal conclusions to which no responsive pleading is required. This Defendant denies any remaining allegations contained in paragraphs 176-179 of Plaintiff's complaint, either specifically or for lack of knowledge.

50. This Defendant denies the allegations contained in paragraphs 180-182 and 186-189. This Defendant denies any factual allegations in paragraph 190 of Plaintiff's complaint that are asserted against this Defendant.

51. Answering paragraph 183-184, this Defendant admits his review of JJ's records and authoring of the January 8, 2015 Report occurred outside of a courtroom, denies that his January 8, 2015 Report was false or misleading, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 183 of Plaintiff's complaint.

52. Answering paragraph 185, this Defendant incorporates the contract for Dr. Schlievert's services. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 185 of Plaintiff's complaint.

COUNT III:

53. Answering paragraph 191, this Defendant incorporates by reference each paragraph of this Defendant's answer, as if fully re-written here.

54. Paragraphs 192 and 196 contain legal conclusions to which no responsive pleading is required. This Defendant denies any remaining allegations contained in paragraphs 192 and 196 of Plaintiff's complaint.

55. This Defendant denies the allegations contained in paragraphs 193 and 197-200 of Plaintiff's complaint. This Defendant denies any factual allegations in paragraph 201 of Plaintiff's complaint that are asserted against this Defendant.

56. Answering paragraph 194, this Defendant admits his review of records and authoring of the January 8, 2015 Report occurred outside of a courtroom. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 194 of Plaintiff's complaint.

57. Answering paragraph 195, this Defendant incorporates the contract for Dr. Schlievert's services. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 195 of Plaintiff's complaint.

COUNT IV:

58. Answering paragraph 202, this Defendant incorporates by reference each paragraph of this Defendant's answer, as if fully re-written here.

59. Paragraphs 203 and 208 contain legal conclusions to which no responsive pleading is required. This Defendant denies any remaining allegations contained in paragraphs 203 and 208 of Plaintiff's complaint.

60. This Defendant denies the allegations contained in paragraphs 204, 206, 209-211, and the first-appearing paragraph 212 of Plaintiff's complaint. This Defendant denies any factual allegations in the first-appearing paragraph 213 of Plaintiff's complaint that are asserted against this Defendant.

61. Answering paragraph 205, this Defendant admits his review of records and authoring of his January 15, 2015 Report occurred outside of a courtroom. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 205 of Plaintiff's complaint.

62. Answering paragraph 207, this Defendant incorporates the contract for Dr. Schlievert's services. This Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 207 of Plaintiff's complaint.

COUNT V:

63. Answering the second-appearing paragraph 212, this Defendant incorporates each and every paragraph of this answer, as if fully re-written here.

64. The second-appearing paragraph 213 and paragraph 214 contain legal conclusions to which no responsive pleading is required. This Defendant denies any factual allegations contained in the second-appearing paragraph 213 and paragraph 214 of Plaintiff's complaint.

65. This Defendant denies the allegations contained in paragraphs 215 and paragraphs 219-222 of Plaintiff's complaint. This Defendant denies any factual allegations in paragraph 223 of Plaintiff's complaint that are asserted against this Defendant.

66. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 216-218 of Plaintiff's complaint.

COUNT VI:

67. Answering paragraph 224, this Defendant incorporates by reference each and every paragraph in this complaint, as if fully re-written herein.

68. Paragraphs 225-227 contain legal conclusions to which no responsive pleading is required. Further answering paragraphs 225-227, this Defendant admits he was responsible for providing Lucas County Children's Services ("LCCS") with assessments of possible abuse and neglect within the scope of the relevant agreement with LCCS to do so. This Defendant denies the remaining allegations contained in paragraphs 225-227, either specifically or for lack of knowledge.

69. Answering paragraphs 228-230, this Defendant denies any factual allegations that are asserted against him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraphs 228-230 of Plaintiff's complaint.

70. This Defendant denies any factual allegations in paragraph 231 of Plaintiff's complaint that are asserted against this Defendant.

COUNT VII:

71. Answering paragraph 232, this Defendant incorporates by reference each and every paragraph in this complaint, as if fully re-written herein.

72. Paragraphs 233-241 contain legal conclusions to which no responsive pleading is required. This Defendant denies any factual allegations in paragraphs 233-241 that are asserted against him, either specifically or for lack of knowledge. This Defendant is without knowledge

or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraphs 233-241 of Plaintiff's complaint.

73. This Defendant denies any factual allegations in paragraph 242 of Plaintiff's complaint that are asserted against this Defendant.

RELIEF REQUESTED:

74. This Defendant denies any factual allegations in paragraph 243 of Plaintiff's complaint that are asserted against this Defendant.

75. This Defendant denies each and every allegation asserted against this Defendant that is not specifically admitted in this Defendant's answer.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's complaint is barred in whole or in part by the applicable statute(s) of limitations.

3. Plaintiff has failed to minimize and/or mitigate her injuries/damages/loss, if any.

4. Plaintiff's injuries/damages/loss were caused, in whole or in part, by the intervening and/or superseding acts of others over whom Defendant exercised no control.

5. One or more of Plaintiff's claims are barred by the doctrine(s) of collateral estoppel and/or res judicata.

6. This Defendant was not acting under the color of law and was not a "state actor" or a "person" within the meaning of 42 U.S.C. § 1983.

7. This Defendant is absolutely and/or qualifiedly immune pursuant to Ohio Rev. Code § 2151.421(G), other state statutes, federal statutes, and/or state and federal common law.

8. Plaintiff's complaint fails to plead with the requisite specificity to overcome this Defendant's immunity(ies) from suit.

9. Plaintiff has failed to properly exhaust state and/or administrative remedies.

10. Plaintiff has failed to join all parties necessary for a just adjudication of this matter, and all or part of Plaintiff's alleged injuries/damages/losses may be attributed to one or more persons from whom does not seek recovery in this action.

11. Plaintiff's claims for punitive damages are improperly pled and are otherwise in violation of the statutes, common law, and Constitutions of the State of Ohio and the United States.

WHEREFORE, this Defendant demands that Plaintiff's complaint be dismissed, with prejudice, at Plaintiff's cost.

ROBISON, CURPHEY & O'CONNELL, LLC

/s/ Chad M. Thompson

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JURY DEMAND

Defendant Randall S. Schlievert, M.D., in his individual capacity demands a trial by jury.

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/s/ Chad M. Thompson

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CERTIFICATE OF SERVICE

Toledo, Ohio
February 17, 2017

This is to certify that a copy of the foregoing was filed electronically this day, in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Chad M. Thompson
Attorney for Defendant Randall S. Schlievert, M.D., in his individual capacity